

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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BOARD OF TRUSTEES, FRENCHTOWN)	
K-12 SCHOOL DISTRICT NO. 40,)	
)	OSPI 274-97
Appellant,)	
)	DECISION AND
vs.)	ORDER
)	
SUNSET WEST HOMEOWNERS)	
ASSOCIATION,)	
)	
Respondent.)	
)	
)	

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This is an appeal by the Frenchtown K-12 School District No. 40 (hereinafter "Frenchtown") of a decision of the Missoula County Transportation Committee (hereinafter "MCTC"). On February 3, 1998, the MCTC issued a decision directing that Frenchtown reinstate the portion of bus route seven known as the Sunset West Loop.

County transportation committees are created by the Legislature in Title 20, chapter 10, MCA. These committees provide a method for setting and reviewing school bus routes locally by people with knowledge of the region. The committees also provide a forum for establishing "the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at hearing" (§ 20-10-132(1)(d), MCA). The county transportation committee membership (§ 20-10-131, MCA) is the county superintendent, a member of the board of county commissioners, and representatives of school districts in the county. The process of approving bus routes is premised on cooperation and compromise among the local school districts.

In this case, however, Frenchtown, was dissatisfied with the decision of the MCTC and appealed to the State. There appears to be some confusion about the issue of state and county reimbursement for Frenchtown's school year 1997-98 bus routes. All parties should take note that the Office of Public Instruction's transportation records show that Frenchtown received \$39,605.94 in state transportation aid for 24 approved bus routes in the first semester of 1997-98 and \$36,289.39 in state transportation aid for 19 approved bus routes in the second semester of 1997-98.

The issues Frenchtown raised on appeal are:

1. The MCTC lacked jurisdiction to hear the appeal.
2. The MCTC failed to accord appropriate deference to the decision of the trustees regarding safety of the route.
3. The MCTC erred when it found that the route in question is safe for operation by the school district.
4. The MCTC erred when it attached significance to the lack of a written policy of the district against running routes on non-county maintained roads.
5. The MCTC exceeded its authority when it ordered that if the Trustees failed to comply with its order, the county superintendent would suspend reimbursement of the Frenchtown School District until it operated the route as ordered by the MCTC.

Notice of Appeal, 3/25/98, p. 2.

The Sunset West Loop has been receiving bus service since 1976 (MCTC Findings of Fact, Conclusions of Law and Order, FOF 13, p. 4). On June 18, 1997, the MCTC reviewed and approved changes to the Frenchtown bus routes for the 1997-98 school year. Minutes of that meeting show that Frenchtown did not submit any changes to its bus routes and the MCTC approved the existing routes. On October 14, 1997, at a regularly scheduled board meeting, the Frenchtown Board of Trustees voted that effective November 1, 1997, it would discontinue running buses on roads not maintained by the county. Three areas were affected, including the Sunset West Loop.

On October 15, 1997, the president of the Sunset West Homeowners Association, on behalf of association members, appealed the decision of the Frenchtown Board to the MCTC. A hearing was held on November 18, 1997, and on December 19, 1997, the MCTC adopted findings of fact, conclusions of law and order requiring Frenchtown to resume traveling the approved route or lose county and state reimbursement (Transcript of hearing, 2/3/98, p. 5).

On January 12, 1998, Frenchtown filed a petition for rehearing with the County Superintendent. A rehearing was granted, in part because there was no transcript made of the hearing of November 18, 1997 (Transcript, p. 6). The rehearing took place February 3, 1998. The MCTC issued Findings of Fact, Conclusions of Law and Order on February 25, 1998, ordering Frenchtown to reinstate that portion of bus route seven known as the Sunset West Loop. Frenchtown filed an appeal with this Superintendent on March 23, 1998.

STANDARD OF REVIEW

This is a review of a county transportation committee decision under § 20-10-132, MCA. This Superintendent applies the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125.

Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986). A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction

that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194, at 198 (1984).

Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990).

DECISION AND ORDER

The MCTC correctly concluded that it had jurisdiction to hear this case. The MCTC also had jurisdiction to require Frenchtown to operate the Sunset West Loop. MCTC did not have the power to suspend transportation reimbursement to the Frenchtown District for all routes and because the Office of Public Instruction administers the school portion of transportation aid, it has administrative knowledge that transportation aid to Frenchtown was not suspended.

MEMORANDUM

Five issues have been raised on appeal.

1. Did the MCTC lack jurisdiction to hear the appeal? No.

Frenchtown argues that the MCTC lacked jurisdiction to hear the appeal because the Sunset West Loop portion of bus route seven was not approved by the Frenchtown Board and therefore, failed to comply with the definition of "Bus Route" in § 20-10-101(1), MCA, and the requirements for eligibility for state reimbursement in ARM 10.7.112. (Appellant's Initial Brief, p. 3). Section 20-10-101(1), MCA, defines bus route as "a route approved by the board of trustees of a school district and by the county transportation committee." ARM 10.7.112 states that to be eligible for state reimbursement the route must be established by the board of trustees by board resolution and approved by the county transportation committee.

On June 18, 1997, the MCTC met and approved bus routes for the 1997-98 school year. Frenchtown Trustee and Committee member, Mary Alexander, stated there were no route

changes for the upcoming year (MCTC Findings of Fact, Conclusions of Law and Order, FOF 11, p. 4). The bus route that included the Sunset West Loop was, at that time, a bus route that was approved by the Frenchtown Board of Trustees and the MCTC. Frenchtown's argument that the MCTC compelled the District to undertake a bus route against its wishes is in error, the bus route is not new and was approved by MCTC.

A county transportation committee's authority to address changes in bus routes is clearly established in § 20-10-132, MCA, which states:

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

- (a) a map of the existing and proposed bus route;
- (b) a description of turnarounds;
- (c) conditions affecting safety;
- (d) the total mileage and change in mileage of the affected bus route;
- (e) the approximate total cost;
- (f) reasons for the proposed bus route change;
- (g) the number of children to be served;
- (h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and
- (i) any other information that the county transportation committee considers relevant. (Emphasis added.)

How a school board initiates a change to a bus route is defined in ARM 10.7.112, which states:

(8) when the board of trustees changes a route's mileage per day, the trustees must amend the TR-1 bus route form, show the effective date of the change, submit it first to the county transportation committee for approval and then to the superintendent of public instruction. . . . (Emphasis added.)

The statute and implementing administrative rule are clear. Any change in a bus route must be submitted to the transportation committee for approval or disapproval. If disapproved, the route would revert to the previously approved route, or it would continue to be run by the district, but not be eligible for transportation reimbursement.

Frenchtown also argued that “change” means only expansion and not reduction, and any reduction of an existing route is the unilateral prerogative of the Board of Trustees and not reviewable by the transportation committee (Transcript, p. 10-17). Nothing in statute or rule supports this definition of “change.” The argument that transportation committees can only hear disputes about expansion is refuted by the plain language of § 20-10-132, MCA, which states:

(1) It is the duty of the county transportation committee to:

...

(d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decisions of the trustees and act on the appeals on the basis of the facts established at hearing.

...

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction who shall issue a decision on the basis of the facts established at the county transportation committee hearing.

With § 20-10-132, MCA, the Legislature created a particular, statutory right for the trustees or a “patron of the district” to have a transportation committee hearing “to establish the facts of transportation controversies.” This Superintendent has upheld this hearing right before. See, for example, Peterson v. School District No. 16A, Hill County, OSPI 226-93, decided November 19 1993, 12 Ed. Law 204.

2. Did the MCTC fail to accord appropriate deference to the decision of the trustees regarding safety of the route? No.

3. Did the MCTC err when it found that the route in question is safe for operation by the school district? No.

The Sunset West Loop portion of bus route seven has been an approved bus route since 1976. (MCTC Findings of Fact, Conclusions of Law and Order, FOF 13, p. 4). In a letter dated September 16, 1997, the Frenchtown Superintendent stated the reason Frenchtown discontinued the Sunset West Loop portion was that the District was “only running bus routes on county maintained roads.” The letter also stated that the school district received several complaints

about routes in some areas and refusing to establish bus routes in other areas. Nothing in the letter addressed the issue of safety. (Letter to Parents from John Hargrove, 9/16/97.)

The hearing on February 3, 1998, lasted approximately 3 ½ hours. The transcript of the hearing shows that most of the discussion centered on safety issues on both sides -- for a bus traveling the Sunset West Loop route and for children walking the Sunset West Loop route to a bus stop in the absence of a bus. Testimony from both sides was heard. The MCTC asked questions and listened to testimony. In the end, they voted to reinstate the Sunset West Loop portion of the bus route. The parties have differing opinions on safety and their testimony conflicts. The MCTC found the testimony of the Sunset West Loop parents to be persuasive. MCTC members living in Missoula County and presumably familiar with county school bus routes determined the route was safe. On review, the State Superintendent will not substitute her judgment for that of the transportation committee as to the weight of the evidence on questions of fact. There is substantial credible evidence in the record to support this condition.

4. Did the MCTC err when it attached significance to the lack of a written policy of the district against running routes on non-county maintained roads?

Both parties are in agreement that the practice of only running bus routes on county maintained roads was not a written policy. It is clearly stated in Superintendent Hargrove's letter of September 16, 1997, to Sunset West Loop and Spring Hill Road bus parents that Frenchtown did not have a written policy. The letter states:

The Board of Trustees is reviewing the districts transportation policies and has discovered several discrepancies in the policy which do not comply with the district practice of "only running bus routes on county maintained roads". Spring Hill Drive and Sunset West Loop routes do not comply with the policy and they are not county maintained roads. (Emphasis added.)

The "policy" is ambiguous. For example, does it mean Frenchtown does not operate bus

routes on state maintained roads? The fact that the policy was unwritten would not be dispositive. Districts do not need to have written policies before trustees can make any decisions. The MCTC February 3, 1997, decision was not based primarily on the fact that Frenchtown had unwritten policies, however, and this is not a grounds for reversing the decision.

5. Did the MCTC exceed its authority when it ordered that if the Trustees failed to comply with its order, the county superintendent would suspend reimbursement of the Frenchtown School District until it operated the route as ordered by the MCTC?

Yes, but as discussed above, this did not occur. The MCTC did not have the authority to suspend reimbursement of all bus routes if Frenchtown did not operate the Sunset West Loop portion of bus route seven.

If a bus route is not approved by the county transportation committee, the county superintendent does not sign the reimbursement form that is submitted to the Office of Public Instruction to trigger reimbursement for that bus route. The school district would not receive reimbursement for that particular bus route. However, unless the school district knowingly violated a transportation law or Board of Public Education transportation policy, it would be reimbursed for all bus routes that are approved by the county transportation committee. OPI records show that Frenchtown received all state and county transportation funding allowed by statute for approved bus routes. The issue Frenchtown raises is moot.

CONCLUSION

The MCTC had jurisdiction to hear this appeal, and it accorded appropriate deference to the testimony at the hearing about the safety of the route. The fact that the district did not have a written policy about running routes on non-county maintained roads was not dispositive and the decision of the MCTC was not based primarily on the fact that the district had unwritten policies. Finally, the MCTC did not suspend reimbursement to the Frenchtown School District.

The decision of the Missoula County Transportation Committee to order Frenchtown School District to reinstate the Sunset West Loop portion of bus route seven is AFFIRMED.

Dated this 21st day of March, 2000.

/s/ Nancy Keenan
NANCY KEENAN

SUSNETFRENCH.274

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this _____ day of March, 2000, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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